

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2021

C O R A M

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

Arb. O.P. Nos.115 of 2020 & 21 of 2021

and

Appln. No.2387 of 2021

Arb.O.P. No. 115 of 2020

1. M.Ashkar Ali
S/o. Mohamed Ali

2. A. Shabana
W/o. M.Ashkar Ali

... Petitioners

Vs

N.Manoharan,
S/o. Nadesan

... Respondent

PRAYER : Original Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996, praying to set aside the award dated 31.10.2019 passed in Arbitration Case No.1 of 2019.

Arb.O.P. No. 21 of 2021

1. A.Shabana
W/o. M.Ashkar Ali

2. M.Ashkar Ali
S/o. Mohamed Ali

... Petitioners

Vs

N.Manoharan,
S/o. Nadesan

... Respondent

PRAYER : Original Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996, praying to set aside the award dated 31.10.2019 passed in Arbitration Case No.2 of 2019.

For Petitioners in
both O.P.s : Mr. Sharath Chandran

For Respondent
in both O.P.s : Ms.A.S.Neela Narayani

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ORDER

(This case has been heard through video conference)

These Original Petitions have been filed challenging the award passed
by the Sole Arbitrator dated 31.10.2019.

2. The main ground on which the award under challenge is that despite objections raised by the respondent as to the agreement and also filing counter, the Arbitrator had passed the award an anti-dated proceedings, after receipt of legal notice issued by the respondent. The award is vitiated, not only that, but when the notice was issued by the arbitrator on 16.08.2019 and immediately, interim reply was given by the petitioners herein. Meanwhile, an exparte order said to have been passed on 18.10.2019 even before the next hearing date. Hence, the contention that entire award is vitiated and liable to be interfered on the ground that no opportunity has been given to them and also violative of principles of natural justice.

3. Whereas the learned counsel appearing for respondent would contend that the notice has been properly served. Despite opportunity was given by the learned Arbitrator, the petitioners have not appeared before him. Hence, the learned counsel submitted that the learned Arbitrator, only after giving proper opportunity, taking note of the documents and evidence, passed the award.

4. I have perused the entire award.

5. The Sole Arbitrator said to have been appointed on the basis of the loan agreement, it was denied by the respondent, as the result of forgery. Be that as it may. This Court will not embark upon the enquiry on the allegations in these proceedings. This Court's role and scope is limited to test the award. On perusal of other materials, immediately after receipt of notice from the Arbitrator dated 16.08.2019, a reply dated 26.08.2019 was sent by the petitioners questioning the very agreement itself and also requested the copy of agreement. It is to be noted that notice of invocation dated 17.07.2019 was issued, which was replied by the respondent requesting to furnish the copy of the agreement, which has not been done so neither by the respondent nor by the Arbitrator. When the Arbitrator issued notice of hearing, the respondent has again reiterated the same and made a request to furnish copy of documents. The letter dated 30.10.2019 addressed by petitioners to the Arbitrator indicates that before the hearing date, an exparte order of attachment has been passed by the learned

Arbitrator. Before the order is being passed, the letter was received by the Arbitrator on 06.11.2019, and in that letter, they have questioned the very proceedings of the Arbitrator from the date of inception. It is the main contention of the petitioners that after the issuance of notice questioning the procedure, the learned Arbitrator passed an anti-dated award and sent the award as if it has been passed on 3rd October 2019. That submissions find some force on seeing the registered post sent by the arbitrator while despatching the award. The same indicates that the award has been despatched only on 20.11.2019. If really, the award was passed on 31.10.2019, there was no need to wait for more than 20 days to despatch the award. The contention of the learned counsel appearing for petitioners that the award has been passed without giving opportunity to the petitioners, despite the request made by them for furnishing the copy of document is fortified by the above conduct of the Arbitrator. The Arbitrator has adopted one side approach and passed the award. Such contentions further fortified by the fact that the learned Arbitrator himself has shown much interest in executing interim order without any application before him to enforce such interim order and he himself acted as a party and sent a

communication to the District Court, Tiruvannamalai requesting for appointment of bailiff to enforce the order said to have been passed on 18.10.2019. It is to be noted that any interim order passed by the Arbitrator shall be deemed to be order of civil court and shall be enforceable under the Code of Civil Procedure. To enforce any such interim order, it is for the parties to take recourse for such enforcement of an order. Whereas, in this matter, without any application, the Arbitrator shown much interest to enforce its own order. In fact, same substitute the submissions of the learned counsel that the arbitration award is nothing, but result of bias and passed hurriedly without giving any opportunity. Such being the position, this Court has no other option except to hold that the award has been passed in hurried manner without giving any opportunity, despite objections raised by the other side and giving colour of award anti-dated and showing more importance to execute the interim order, which was passed even without hearing parties. Such award cannot be sustained as there is a procedural violation. Accordingly, the same is set aside.

6. Both sides agreed to go for fresh arbitration and consented to appoint Mr. P.V.Balasubramanian, Advocate as an Arbitrator. It is open to the parties to raise all disputes including the validity of the agreement dated 12.04.2018.

7. Accordingly, this Court passes the following order :-

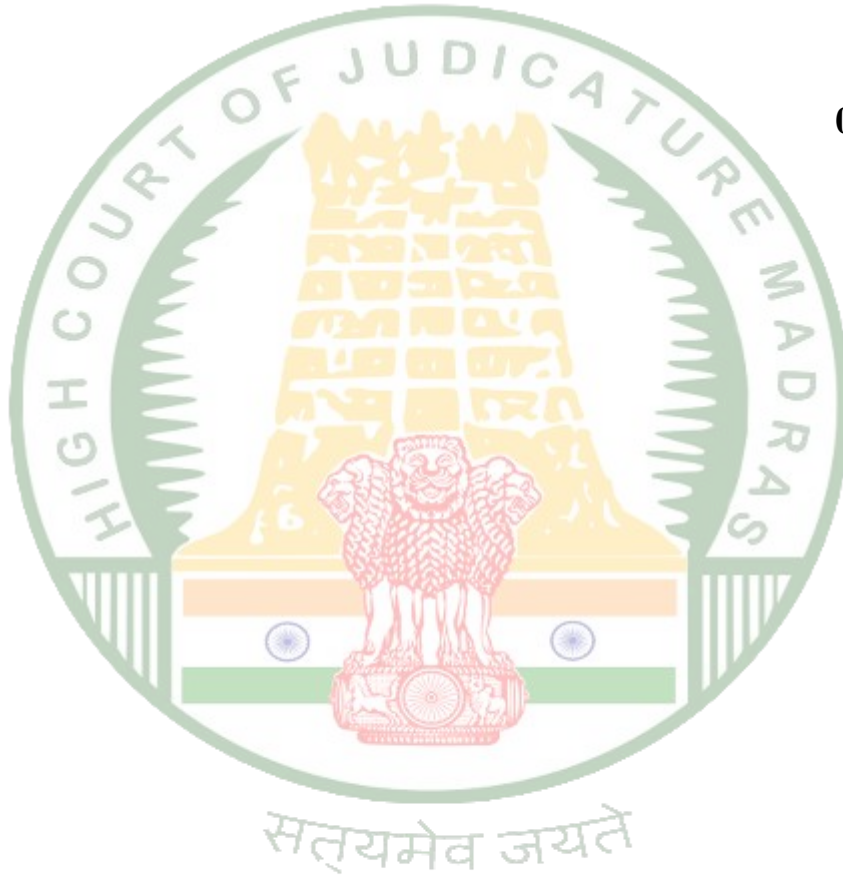
- i) Mr.P.V.Balasubramanian, Advocate of this court, residing at III/I, Third Floor, Sai Durbar Apartments, No.50, 2nd Main Road, R.A.Puram, Chennai-600 028 Mobile No. 98410 45923, as Arbitrator to resolve the dispute between the parties.
- ii) That the learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order.
- iii) That the learned Sole Arbitrator appointed herein shall be paid fees and incidental charges fixed by him and the same shall be borne by the parties equally.

The attachment order passed by the then Arbitrator stands vacated in view of setting aside the entire arbitral award.

7. In the result, these Original Petitions are allowed accordingly. No costs. Consequently, connected application is closed.

04.08.2021

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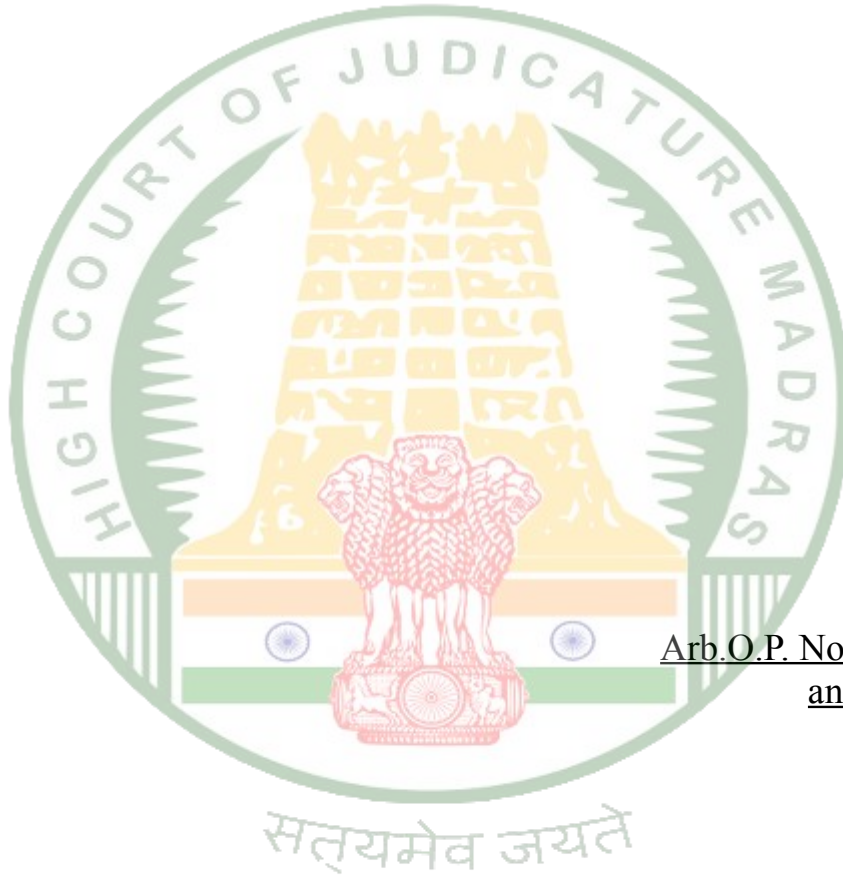


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